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NEW YORK, N.Y. 10005

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RECORDATION NO. .... Filed 1425

JUN 22 1979 -12 05 AM

INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

Texasgulf Inc.

Lease Financing Dated as of March 15, 1979

9-3/4% Conditional Sale Indebtedness

Due 1999

[CS&M Ref.: 5471-002]

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith, on behalf of Texasgulf Inc., for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of March 15, 1979, between The Connecticut Bank and Trust Company and Thrall Car Manufacturing Company; and

(b) Agreement and Assignment dated as of March 15, 1979, between Thrall Car Manufacturing Company and New England Mutual Life Insurance Company.

2. (a) Lease of Railroad Equipment dated as of March 15, 1979, between Texasgulf Inc. and The Connecticut Bank and Trust Company; and

(b) Assignment of Lease and Agreement dated as of March 15, 1979, between The Connecticut Bank and Trust Company and New England Mutual Life Insurance Company.

The names and addresses of the parties to the aforementioned agreements are as follows:

MAURICE T. MOORE  
BRUCE BROMLEY  
WILLIAM B. MARSHALL  
RALPH L. MCAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN

JAMES H. DUFF  
ALAN J. HRUSK  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMY  
DAVID L. SCHWARTZ  
RICHARD J. HIGEL  
FREDERICK D. SCHWARZ, JR.  
CHRISTINE SHAR  
ROBERT S. FKIND  
DAVID O. BOWNWOOD  
PAUL M. DYK  
RICHARD ALLEN  
THOMAS BROME  
ROBERT JOFFE  
ROBERT MULLEN  
ALLEN INKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADBENT  
ALAN C. STEPHENSON

COUNSEL

ROSWELL L. GILPATRICK  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER

CARLYLE E. MAW  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON

4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-64  
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33 THROGMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
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TELEX: 8814901

CABLE ADDRESSES  
CRAVATH, N.Y.  
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(1) Vendor-Assignee:

New England Mutual Life Insurance Company  
501 Boylston Street  
Boston, Massachusetts 02117.

(2) Trustee-Vendee-Lessor:

The Connecticut Bank and Trust Company,  
One Constitution Plaza  
Hartford, Connecticut 06115.

(3) Builder-Vendor:

Thrall Car Manufacturing Company,  
P. O. Box 218  
Chicago Heights, Illinois 60411.

(4) Lessee:

Texasgulf Inc.  
P. O. Box 30321  
Raleigh, North Carolina 27612.

Please file and record the documents referred to in this letter and cross-index them under the names of the Vendor-Assignee, the Trustee-Vendee-Lessor, the Builder-Vendor and the Lessee.

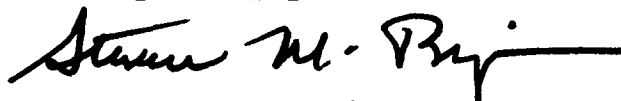
The equipment covered by the aforementioned documents consists of 200 100-ton covered hopper cars with continuous trough hatches (LO), bearing identifying numbers TGSX 443001-TGSX 443200, inclusive, and also bearing the legend "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION".

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to

retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven M. Berzin", with a long horizontal stroke extending to the right.

Steven M. Berzin  
As Agent for Texasgulf Inc.

Mr. H. G. Homme, Jr.,  
Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

RECORDATION NO.

10530

Filed 1425

JUN 22 1979 - 12 05 PM

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of March 15, 1979

between

TEXASGULF INC.

and

THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee

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## Lease of Railroad Equipment

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LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1979, between TEXASGULF INC., a Texas corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Thirteenth HFC Leasing Corporation (the "Owner").

WHEREAS pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor, the Owner, HFC Leasing Inc. and New England Mutual Life Insurance Company (hereinafter, with its successors and assigns, called the "Vendor"), the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Thrall Car Manufacturing Company (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (the "Equipment");

WHEREAS the Builder is assigning its interest in the CSA to the Vendor;

WHEREAS the Lessor is assigning its interest in this Lease to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"); and

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, any abatement, reduction or setoff due, or

alleged to be due, by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Owner or the Vendor or otherwise; provided, however, that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, any prohibition or restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding involving the Lessee, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and, except as herein provided, the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to determine that each Unit has been delivered in good order and, if such Unit is found to be in good order and has been inspected and approved by an authorized representative of the Lessee at the Builder's plant, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certifi-

icate of acceptance (the "Certificate of Acceptance") in the form set forth in Exhibit A hereto in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date set forth in such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease, in arrears, one interim and 240 consecutive monthly rental payments. The interim rental payment for each Unit subject to this Lease is payable on August 15, 1979, and shall be in an amount equal to the product of the Purchase Price for such Unit (as defined in the CSA) multiplied by 0.026712% for each day elapsed from and including the Closing Date (as defined in the CSA) for such Unit to but not including August 15, 1979. The 240 monthly rental payments shall be paid as follows: (i) the first 60 of such rental payments shall each be in an amount equal to 0.5915% of the Purchase Price of each such Units then subject to this Lease, and shall be payable on the fifteenth day of each month, commencing September 15, 1979; and (ii) the remaining 180 rental payments shall each be in an amount equal to 0.6966% of the Purchase Price of each such Unit then subject to this Lease, and shall be payable on the fifteenth day of each month, commencing September 15, 1984. In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor, as additional rental on August 15, 1979, an amount equal to the payment required to be made by the Lessor pursuant to the proviso of the first sentence of Paragraph 9 of the Participation Agreement.

The Lessee and the Lessor agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule 2 hereto and the Termination Value percentages set forth in Schedule 3 hereto will be adjusted upward or downward to reflect (A) any amendment to, or change in, the Internal Revenue Code of 1954, as amended (the "Code"), the income tax regulations thereunder or published adminis-

trative interpretations of the Code or such regulations, which change or amendment is enacted or adopted on or before December 31, 1979, and (B) the delivery of any Unit or Units after June 30, 1979. Such adjustments will be effective as of the rental payment date next following such amendment or change, or such difference in delivery schedule, as the case may be, and will be made in such manner as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owner had such amendment or change, or such difference in delivery schedule, as the case may be, not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time. Notwithstanding anything herein, the rentals payable and Casualty Value and Termination Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy its obligations under the CSA and to satisfy the pretax cash flow and profit requirements of Section 4(6) of Rev. Proc. 75-21, 1975-1 Cum. Bul. 715. The Owner shall furnish the Lessee and the Vendor prior to the effective date of such adjustments with a notice setting forth in reasonable detail the computations and methods used in computing the adjustments.

If any rental payment date referred to above is not a business day the rental otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, Hartford, Connecticut, New York, New York, or Houston, Texas, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee (i) as long as any of the CSA Indebtedness (as defined in the CSA) is outstanding, to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, to the extent such payments are required to satisfy the obligations of the Lessor under the CSA, to the Vendor, at the address and by the method specified in the Consent and Agreement, dated as of the date hereof, attached to the Lease Assignment (the "Consent"), for the account of the Lessor, and (ii) subject to the provisions of the Lease Assignment, so long as no event of default specified in Article 15 of the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at the address set forth herein or at such other place as the Lessor

shall specify in writing unless and until the Vendor shall otherwise direct the Lessee in writing; provided, however, that the Lessee shall make all payments provided for in §§ 6, 9 and 16 hereof directly to the person entitled to receive them, as provided in the Lease Assignment. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor or the Lessor, as the case may be, by 11:00 a.m., New York time, on the date such payment is due. From and after the date of payment in full of all obligations of the Lessor under the CSA, all such payments shall be made directly to the Lessor.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10, 13, 13A and 14 hereof, shall expire on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee under §§ 6, 7, 9, 10, 11, 12, 14 and 16 hereof shall survive the expiration or any termination of the term of this Lease; provided, however, that notwithstanding anything to the contrary contained herein, the Lessee shall not be required to indemnify the Lessor, the Owner, the Vendor or any assignee of any of such parties for any claim which arises solely from acts, events or conditions which occur or come into being after the expiration or any termination of the original term or extended term, if any, of this Lease; provided further that in the event any of the Units are stored as provided in § 11 or § 14 hereof, the obligations of the Lessee pursuant to §§ 7 (third and fourth paragraphs only), 9 (third paragraph only), 10, 11, 12 (fourth paragraph only) and 14 hereof shall survive expiration of the original term or extended term, if any, of this Lease with respect to acts, events or conditions which occur or come into being before the termination of the storage period.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and remedies of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Payments (as defined

in the Lease Assignment) are being made to the Vendor, and the Vendor is entitled to apply the Payments in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under § 12 hereof.

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto or, in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, and that no other filing, deposit or giving of notice with any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor (in both its individual and fiduciary capacities) for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes except as provided in the second paragraph of this § 6 (other than any United States Federal income tax payable by the Lessor and other than the aggregate of all state or local taxes on or measured by net income and value added taxes in lieu of such net income taxes, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided, all of which taxes, which are excluded from the term "imposition" hereunder being referred to as "excluded taxes") or license fees, assessments, charges or fines, or penalties with respect to any of the foregoing (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title of the Units under the terms hereof or the CSA, each and every such imposition the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein unless such imposition results from (i) any Federal, state or local minimum tax imposed on or with respect to items of tax preference or any similar tax; (ii) sale or use taxes which are part of the amount payable by the Lessor or the Owner under the CSA and which are included in the Purchase Price of the Units; (iii) any income taxes on or based on or measured by any fees or compensation received by the Lessor as Trustee for services rendered in connection with the transactions contemplated in this Lease and the Participation Agreement and related documents; or (iv) any impositions with respect to the sale, exchange, transfer or other disposition of all or any part of the Lessor's or the Owner's respective interest in the Units, the Lease or the Trust Estate (as defined in the Trust Agreement), except pursuant to the exercise of any remedy upon an Event of Default and except for any sales or similar tax imposed with respect to any purchase which may be made by the Lessee pursuant to the provisions hereof. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the

Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or of the Lessor or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of any such contest brought in the Lessee's name prior to or within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

Any liability of the Lessee for foreign taxes imposed on the Lessor shall not be deemed to be an imposition within the meaning of this § 6 to the extent that the Lessor receives (a) a credit in whole or part therefor against any liability it may have for excluded taxes and (b) the United States tax benefit of a deduction therefor which reduces the Lessor's liability for such excluded taxes.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the CSA not covered by the foregoing paragraphs of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions

hereunder) to the Lessor to fulfill completely the Lessor's obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee, where permitted by law, will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such returns, statements or reports to them within a reasonable period of time prior to the time such returns, statements or reports are to be filed in such manner as shall be satisfactory to them; provided, however, that, in the case of returns, statements or reports prepared and filed by the Lessee, if in the reasonable opinion of the Lessee any such returns, statements or reports contain information confidential to the Lessee, the Lessee shall submit to the Lessor in lieu of the foregoing returns, statements or reports, a statement of the Lessee's auditors, Peat, Marwick, Mitchell & Co. (or such other auditor as may be reasonably approved by the Lessor), listing all such returns, statements and reports stating that the Lessee has made all such returns, statements and reports, showing the interest of the Lessor and the Vendor to the extent permitted by law and verifying that the statements made by the Lessee in such returns, statements or reports accurately reflect therein all relevant information as to the Units.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action, but only such action, reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such action unless the Lessee shall first have

indemnified the Lessor for all liabilities and expenses which may be entailed therein. The Lessee shall indemnify and hold the Lessor (in both its individual and fiduciary capacities) harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred as a result of, or incident to, any action taken by the Lessor or the Lessee under this § 6; provided that any action taken by the Lessor shall be consistent with the action reasonably requested by the Lessee in accordance with the first sentence of this paragraph. The Lessee shall be entitled to any refund (plus interest, if any) received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances with respect to, or furnish other evidence satisfactory to the Lessor of, the Lessee's performance of its duties under this § 6; provided, however, that the Lessee's auditors, Peat, Marwick, Mitchell & Co. (or such other auditors as may be reasonably approved of by the Lessor) verifying that the Lessee has filed any particular return and paid any particular imposition involving the Units for any specific period of time shall be satisfactory evidence of performance of the Lessee's obligations under this paragraph of § 6 as to the matters referred to in such auditor's statement. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions, including, but not limited to, data as to any use of any Unit outside the United States of America.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment and such imposition on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that the Lessor would have had or been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Termination; Insurance. The Lessee agrees that, at the Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for interchange service under the applicable rules of the American Association of Railroads (or any of its successors).

In the event that any Unit shall be or become physically worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the CSA or for an indefinite period, but only when such indefinite period shall have exceeded the term of the CSA, or by any political subdivision of the United States of America or any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit), subject to the provisions of the fifth paragraph of this § 7, the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date; provided, however, that if the Casualty Value for any Unit

as of such payment date as determined pursuant to Schedule 2 hereof reflects an amount representing investment credit recapture to the Owner that is greater or less than the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence with respect to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence with respect to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original term hereof or the extended term hereof, if any, and before the end of the storage period provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be (i) 20% of the Purchase Price of such Unit, in the case of a Casualty Occurrence after the expiration of the original term hereof, and (ii) the Casualty Value of such Unit applicable on the last day of the extended term, in the case of a Casualty Occurrence after the expiration of the extended term. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis, such disposition and all expenses related thereto to be at Lessee's cost and expense. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or by any political subdivision of the United States of America or by any other governmental entity (hereinafter called the "Government") of any Unit during the term of this Lease, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if

such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or § 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee shall, at its sole expense, obtain and maintain in full force and effect from the time any Unit is accepted by the Lessee and throughout the term of this Lease and during any storage period as provided in § 11 or § 14 hereof, on the Units from time to time subject hereto, with such insurers as are reasonably satisfactory to the Lessor and the Vendor (i) insurance in the amount per occurrence of at least the lesser of (x) \$5,000,000 and (y) the aggregate Casualty Value of the Units then subject to this Lease against all risks of physical loss of, or damage to, the Units and (ii) public liability and property damage insurance in the amount of at least \$20,000,000 per occurrence covering liability for personal injuries, death or property damage resulting from the ownership, maintenance, use or operation of the Units; provided, however, that in the case of property insurance, the Lessee, at its option, may self-insure the Units to the extent it typically self-insures similar equipment and to the extent such self-insurance, including any program of risk assumption, is consistent with prudent industry practice. All insurance policies required hereby shall, without limitation of the foregoing,

(i) require 30 days' prior written notice of cancelation or material change in coverage to the Lessor, the Owner and the Vendor and (ii) name the Lessor (in both its individual and fiduciary capacities), the Owner and the Vendor as loss payees as their respective interests may appear, in the case of property insurance, and as additional named insureds, in the case of liability insurance, and (iii) shall provide that in respect of the interests of the Lessor, the Owner and the Vendor in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor, the Owner and the Vendor) and shall insure the Lessor, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor, the Owner or the Vendor). The Lessee shall furnish to the Lessor and the Vendor prior to the acceptance date of any Unit and upon request throughout the term of this Lease (i) evidence of insurance satisfactory to the Lessor and the Vendor showing the existence of the insurance required hereunder and (ii) if the Lessee self-insures or intends to self-insure any Unit in respect of property insurance, a certificate of the Lessee to the effect that the Lessee typically self insures equipment similar to such Unit in respect of property insurance and that such self-insurance, including any program of risk assumption of the Lessee, is consistent with prudent industry practice. The property insurance referred to in this § 7 may be written with such deductible amounts as the Lessee deems appropriate but not in excess of deductible amounts applicable to property insurance carried by the Lessee on other railroad rolling stock owned or operated by the Lessee and, in any event, only to the extent such deductible amounts are consistent with prudent industry practice.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Vendor, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Vendor for all reasonable expenditures made by the Lessor or the Vendor for such insurance, together with interest thereon computed at the maximum rate of interest permitted by law, but not more than 10-3/4% per annum, from the date of the Vendor's or the Lessor's payment until reimbursed by the Lessee.

If the Lessor shall receive any insurance proceeds (other than on policies for which the Lessor has paid premi-

ums) or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to such Unit having suffered a Casualty Occurrence and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired and so long as no Event of Default (as defined in § 10 hereof) is continuing under this Lease.

In the event that the Lessee shall, in its reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the chief executive officer of the Lessee and as certified as such by the Lessee to the Lessor and the Vendor, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all but not less than all of such Units as of any succeeding rental payment date specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall be (x) on August 15, 1989, or (y) not earlier than August 15, 1994, nor later than August 15, 1999 (the Termination Date to be on February 15 or August 15 of the year in which the Termination occurs), (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date, and (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any

party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to each such Unit an amount equal to (i) the excess, if any, of the Termination Value (as hereinafter defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Lessor in connection with such sale and (ii) the rental payment with respect to each such Unit due on such Termination Date. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 3 hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to such Units as of such Termination Date.

If no sale of the Units shall occur on the Termination Date with respect thereto as provided above, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Lessor an amount equal to the Termination Value of such Unit as of such Termination Date and any rental payment due with respect thereto on such Termination Date and returns any unsold Unit to the Lessor pursuant to § 14 hereof.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all of the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to any such Unit, elect to retain such Unit, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to such Unit, the Lessee shall deliver such Unit to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. Reports and Inspections. On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor, the Owner and the Vendor (a) an accurate statement (i) setting forth as at the preceding December 31 the quantity, description and road numbers of all Units then leased hereunder, the quantity, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Units pursuant to § 7 hereof, and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts, including deductible amounts, of such insurance in effect. The Lessor, at its sole cost and expense, shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto as may be reasonably necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease, all at such reasonable times as the Lessor shall request. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Units pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports required to be furnished pursuant to Paragraph 8 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Article 13 of the CSA or of Annex A of the CSA or any other claims the Lessor may have against the Builder or others relating to the quality or performance of any Unit, any of its components or its design or construction, whether such claims be based in contract (including breach of warranty) or tort; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following (except as arise solely from acts of the Lessor not contemplated by this Lease, the Participation Agreement or the documents referenced herein and therein): (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of

a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules of the Association of American Railroads (or any of its successors), the violation of which laws or rules would subject the Lessor to legal or administrative remedies or could adversely affect the Lessor's ownership interest in the Units or the security interests of the Vendor in the Units, the CSA or the Lease, to the extent that such laws or rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal hereof and prior to the return of such Units to the Lessor pursuant to § 11 or § 14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service under the rules of the Association of American Railroads (or any of its successors) or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

Any additions, modifications and improvements made to any Unit by the Lessee (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities), the Owner and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort and claims in which negligence, whether active or passive, or breach of warranty or contract of such indemnified party is alleged) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, except, for the purposes of this § 9, for any liability for taxes of any nature imposed on the Lessor, the Owner, the Vendor or any assignee of any such party, whether or not the Lessee has agreed to indemnify against any such taxes under any other section of this Lease, arising out of or as the result of the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the CSA, the Participation Agreement, this Lease or any sublease entered into pursuant to § 12 hereof, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit, the compliance or noncompliance by the Lessee with any applicable law, rule or regulation with respect to the use, maintenance or operation of any Unit, or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Units by the Vendor pursuant to any provision of the CSA; provided, however, that the Lessee shall not be required to indemnify any party indemnified hereunder in respect of such party's wilful misconduct

or gross negligence. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 11 or § 14 of this Lease, notwithstanding such expiration, termination and return; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the CSA Indebtedness and shall not be deemed to operate as a guarantee of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee as a result of which liability may be charged against the Builder under the CSA.

Except as provided in § 7 hereof, the Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns, except as provided in § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by

reason of the ownership of the Units by the Lessor or the interest of the Vendor therein or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur and be continuing:

(a) default shall be made in payment of any amount due under § 3, § 7 or § 13A of this Lease and such default shall continue for five business days, or default shall be made in payment of any other amount due under this Lease and such default shall continue for five business days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled and to recover possession of such Units within 15 days after written notice from the Lessor or the Vendor to the Lessee demanding the same;

(c) any of the representations and warranties of the Lessee contained in the Participation Agreement shall be or have been incorrect in any material respect as of the date when made and continue to be incorrect, or default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or in the Consent, in any of such cases continuing for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied; or

(d) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Lessee or of a major part of its property is appointed by order of any court of competent jurisdiction in the United States of America or in any other place where the Units may be used by the Lessee and such

order remains in effect for more than 60 days; or the Lessee is adjudicated bankrupt or insolvent by such court; or a major part of its property is sequestered by order of such court and such order remains in effect for more than 60 days; or a petition is filed against the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 60 days after such filing;

(ii) Voluntary Petitions--the Lessee files a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt, or consents to the appointment of a receiver, trustee or liquidator of the Lessee or of all or a major part of its property;

then, in any such case, the Lessor, at its option, may:

(x) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including amounts sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of the receipt of such damages and amounts on its United States Federal income tax and state and local taxes or franchise taxes based on net income, that the Lessor would have realized or would have been in had such breach not occurred; or

(y) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the

use of the Units shall terminate as though this Lease had never been made, but the Lessee shall remain liable under this Lease to the extent that this Lease provides that the obligations of the Lessee under this Lease shall survive a termination or expiration thereof; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, sell, operate, lease to others and enjoy the same free from any right of the Lessee to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time after deduction of all reasonably estimated expenses and costs in connection with such sale; provided, however, that, in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this paragraph (y) with respect to such Unit, shall have a right to recover from the Lessee, and the Lessee shall pay to the Lessor, in addition to any amount payable to the Lessor by the Lessee pursuant to §§ 6, 9 and 16 hereof, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale (after deduction of all reasonable expenses and costs in connection with such sale).

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due under this

Lease before, during or after the exercise of any of the foregoing remedies and shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives (i) any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law and (ii) any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf against any other party (which claim, if any, the Lessee reserves the right to assert separately against any such party). The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the events set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such events or similar events.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take, or cause to be taken by its agent or agents, immediate possession of each of the Units, and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered and any modification or addition permitted or required to be attached to

such Unit pursuant to this Lease shall be in the same operating order, repair and condition as when originally delivered to the Lessee or attached to such Unit, as the case may be, ordinary wear and tear excepted, the standard for ordinary wear and tear to be that wear and tear which would have been suffered by units of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in units of such type by common carriers. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessee may designate and as may be satisfactory to the Lessor;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on any lines of railroad or to any connecting carrier for shipment within the United States of America, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective

purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned and accrued in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day after such termination to the date of delivery of such Unit to the Lessor an amount equal to the amount, if any, by which (x) the product of (i) a fraction the numerator of which is  $9\frac{3}{4}\%$  and the denominator of which is 360, and (ii) the Purchase Price of such Unit exceeds (y) the actual earnings received by the Lessor with respect to such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Units pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use; Discharge of Liens. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the conditions specified in the proviso to the last paragraph of § 4 hereof are satisfied, the Lessee shall be entitled to the possession, quiet enjoyment and use of the Units, provided that the Lessee may not, except with the Lessor's prior written consent, which shall not be unreasonably withheld, (a) sublease any of the Units to any other person for a term or terms that aggregate more than eight months in any one year or (b) permit any of the Units

to be used by any other person, except for usage thereof in normal interchange service, any such usage to be subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the continental United States of America; provided, further, however, that, subject to the provisions of § 15 hereof, the Lessee may assign or permit the assignment of any Unit to occasional service in Canada. Notwithstanding the immediately preceding proviso, no Unit shall be used predominantly outside the United States of America within the meaning of Section 48(a) of the Code, nor shall the Lessee sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "Section 38" property within the meaning of the Code. Except as set forth in the last paragraph of this § 12, the Lessee may not assign this Lease to any other person. No sublease or usage permitted by the foregoing shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default thereunder or an Event of Default hereunder and no such sublease shall relieve the Lessee of its obligations to the Lessor under this Lease. Any rentals payable under any sublease permitted or consented to pursuant to this § 12 shall not be assigned to the Lessor or the Vendor as security for the Lessee's obligations hereunder and shall be for the account of and be retained by the Lessee irrespective of whether or not such rentals exceed the rentals payable by the Lessee to the Lessor.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance created by or through the Lessor, the Owner, the Vendor or their respective assignees or resulting from claims against the Lessor, the Owner, the Vendor or their respective assignees not related

to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the reasonable opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the CSA.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in all but not less than all the Units or possession of all but not less than all the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or, with the prior written consent of the Lessor and the Vendor, property of the Lessee related to the operation of the Units or a portion thereof; provided, however, that (i) such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and will have a consolidated net worth determined in accordance with generally accepted accounting principles not less than that of the Lessee immediately prior to such transaction and (ii) in the case of any such acquisition of less than all or substantially all of the property of the Lessee, such acquisition shall not alter in any way the Lessee's obligation to the Lessor and the Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Right of Refusal. Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is continuing hereunder, in the event the

Lessor, in its sole discretion, elects to sell the Units to third parties at the expiration of the original term of this Lease or the extended term thereof, if any, the Lessee shall be given written notice of such intention prior to the expiration of such term (or extended term, if any). Within 20 business days of receipt of notice from the Lessor of the intention to sell, the Lessee may exercise a purchase right at the then Fair Market Value of the Units by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than 10 days after determination, pursuant to this § 13, of the Fair Market Value of the Units. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date of expiration of such term (or extended term, if any) of this Lease until the date of such purchase.

Upon payment of the purchase price of the Units by the Lessee, as provided above, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties (except as to the Lessor's title being free and clear of any lien created by or through the Lessor)) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such forms as may reasonably be requested by the Lessee, all at the Lessee's expense.

Fair Market Value shall be agreed upon by the Lessor and the Lessee or determined as provided in the next paragraph, on the basis of (and shall be equal in amount to) the sale value which would obtain in an arm's-length transaction between an informed and willing vendee under no compulsion to buy and an informed and willing vendor under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such sale value, but there shall be excluded any sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that in the determination of Fair Market Value, the existence of the Lessee's right of refusal pursuant to this § 13 shall be disregarded. Fair Market Value of the Units shall be determined upon the assumption that the Units shall have been maintained in accordance with the provisions of

§ 7 hereof, without regard to any limitation contained in the second paragraph of § 9 of this Lease on the Lessee's duty to comply with applicable laws and rules.

If after 15 days from the giving of notice by the Lessee of the Lessee's election to exercise its right to purchase the Units as provided in this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value, such Fair Market Value shall be determined in accordance with the provisions of the preceding paragraph of this § 13 by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall, within 30 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser appointed, pursuant to the foregoing procedure, shall be instructed to determine the Fair Market Value of the Units subject to the proposed sale within 30 days after his appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser within the time period stated above, the determination of a single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the dates thereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value, unless otherwise agreed upon by the Lessor and the Lessee as provided for in this § 13, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures or rights. The expense of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 13A. Renewal Option. (a) Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee shall have the option to extend the term of this Lease with respect to all but not less than all of the Units then subject hereto, by written notice delivered to the Lessor not less than 6 months nor more than 1 year prior to the end of the original term of this Lease, such extension to be on the conditions herein set forth:

(i) Such option shall be to extend this Lease for a period of five years, such period to commence on the scheduled date of expiration of the original term of this Lease.

(ii) In the event that the Lessee elects to exercise its option to extend this Lease, as provided for in this § 13A, such extension shall be on the same terms and conditions as are contained in this Lease, except (x) as to the amount of rentals, which shall be at a "Fair Market Rental" (as defined in this § 13A) payable monthly in arrears, (y) that no Termination shall be permitted during any extended term of this Lease and (z) that the Casualty Value of each Unit on the first day of the extended term shall be equal to the "Fair Market Value" of such Unit on such date, as determined by the procedures established in § 13 hereof, and that thereafter such Casualty Value shall be reduced on a straight line basis over the estimated remaining useful life of such Unit.

(b) Fair Market Rental shall be agreed upon by the Lessor and the Lessee or determined as provided in the next paragraph on the basis of (and shall be equal in the amount to) the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession), and an informed and willing lessor, with neither party being under any compulsion to lease, and, in such determination, costs of removal from the location of current use shall not be in deduction from such rental; provided, however, that Fair Market Rental shall be determined as provided in this sentence on the basis of the extension term and other terms and conditions of the Lease being considered, and provided further, that Fair Market Rental of the Units shall be determined upon the assumption that the Units shall have been maintained in accordance with the standards stated in § 14 hereof, and in accordance with all applicable laws and rules, whether or not required to be complied with pursuant to § 7 hereof.

(c) If after 15 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in paragraphs (a) and (b) of this § 13A, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, such Fair Market Rental shall be determined in accordance with the provisions of paragraph (b) of this § 13A by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine Fair Market Rental of the Units subject to the proposed extended Lease term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of a single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental unless such value is agreed upon by the Lessor and the Lessee as provided for in paragraph (b) of this § 13A, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. Upon the expiration of the original term or extended term of this Lease with respect to any Unit which the Lessee does not purchase pursuant to § 13 hereof, the Lessee will,

at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee (at not more than three locations) as the Lessee may reasonably designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to the nearer of (x) Chicago, Illinois and (y) any purchaser, lessee or user thereof at a location indicated to the Lessor by such party, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, the standard for ordinary wear and tear to be that wear and tear which would have been suffered by units of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in units of such type by common carriers and shall meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction provided that the Lessee shall not be required to make any additions, modifications and improvements which would not be required of the Lessee if the Lessee continued to operate the Units (but without regard to any limitation contained in the second paragraph of § 9 of this Lease on the Lessee's duty to comply with applicable laws and rules). The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day after the 60th day after such termination an amount equal to the amount, if any, by which (x) the product of (i) a fraction the numerator of which is  $9\frac{3}{4}\%$  and the denominator of which is 360, and (ii) the Purchase Price of such Unit exceeds (y) the actual earnings received by the Lessor on such Unit for each such day. Even though the Lessee shall be required to pay the amount specified in the next preceding sentence after the 60th day after such termination, the Lessee shall have 120 days after such termination to deliver possession to the Lessor of any Unit undergoing repair

at the time of such termination, but only to the extent the additional time is needed to effect the repair.

§ 15. Recording. The Lessee will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments hereof and thereof to the Vendor; provided, however, that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States of America if (1) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Lessor to and the security interest of the Vendor in not less than 90% of the total number of Units then subject to this Lease, and (2) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in § 5 hereof.

The Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the CSA and the assignments hereof and thereof shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

If the Lessee is not in default under the provisions of this Lease, any expenses incurred by the Lessee pursuant to this § 15 which are incurred as the result of any assignment by the Lessor, the Owner, the Vendor or any assignee of any such party of their respective interests in any Unit or Units to any assignee not specifically named in the Participation Agreement and related documents shall be reimbursed by the Lessor to the Lessee; provided, however, that the Lessor shall not be required to make such reimbursement until it has received reimbursement from the Owner or any assignee of the Owner's interest in any Unit or Units in the event of an assignment by the Lessor, the Owner, the Vendor

or any assignee of any such party.

§ 16. Income Taxes. (a) Loss of Assumed Tax Benefits. If,

(i) the Owner is not allowed for its calendar 1979 taxable year an investment credit under Section 38 and related sections of the Code with respect to any one or more of the Units placed under this Lease in such year of not less than 10% of the Purchase Price with respect to such Unit or Units; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation, commencing with its calendar 1979 taxable year, on any one or more of the Units placed under this Lease in such year under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have an asset depreciation period of 12 years, and (z) determined on the basis of the "modified half-year convention" of Section 1.167(a)-11(c)(2)(ii) of the income tax regulations; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the CSA; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable under the CSA shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the end of the term of this Lease (including any extended

term) in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by the Lessee (herein called a "Capital Expenditure");

(any such failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure being herein called a "Loss"), then, subject to paragraph (b) of this § 16, the Lessee shall pay to the Owner as an indemnity the amount set forth in paragraph (d) of this § 16 at the time or times set forth therein.

(b) Indemnification and Exceptions. Except as hereinafter provided, the Lessee shall be required to indemnify the Owner with respect to any Loss in the event that such Loss results from:

(A) a Loss described in clause (i) or (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b) or 167(c)(2) of the Code from commencing with the Owner or from the Lessee's use of a Unit in violation of a covenant set forth in the second sentence of the second paragraph of § 12 hereof;

(B) the Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 16;

(C) a Capital Expenditure;

(D) the inability of the Owner to depreciate any Unit to a net salvage value of zero, provided that the Owner makes the election provided for in Section 167(f) of the Code and, further provided, that any factual assumptions as to salvage value made by the Owner in filing its U.S. Federal income tax return have been based on the opinion of an expert skilled and experienced in making such determinations;

(E) any other act, or failure to act, at any time, by the Lessee or any of its officers, employees or agents (including, without limitation, any act, or failure to act, in respect of the income tax returns of the Lessee insofar as they relate to the transactions

contemplated by this Lease), it being understood that this clause (E) shall not apply to any Casualty Occurrence or Termination.

Notwithstanding anything herein contained, the Lessee shall not be required, however, to indemnify the Owner with respect to any Loss that results solely and directly from:

(i) a Casualty Occurrence or Termination, if the Lessee has made all payments with respect thereto that are required to be made pursuant to § 7 hereof;

(ii) a voluntary disposition by the Owner or by the Lessor of their respective interests in any Unit or Units, if such disposition (x) shall be the direct cause of such Loss with respect to such Unit or Units, (y) shall occur at a time while no Event of Default (and no event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee, which consent shall expressly refer to this provision and shall not be given if in the reasonable opinion of the Lessee such disposition shall cause such a Loss unless the Lessee is released from the indemnification of such Loss hereunder;

(iii) the failure of the Owner to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, unless the Owner shall have been advised by Messrs. Donovan Leisure Newton & Irvine, or other independent tax counsel selected by the Owner and approved by the Lessee (which approval shall not be unreasonably withheld), that there is no reasonable basis for claiming any such deduction or credit;

(iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income, whether net investment income or otherwise, to benefit from such depreciation or interest deductions;

(v) the failure of the Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 16;

(vi) any amendment to, or change in, the Code, the income tax regulations thereunder or published administrative interpretations of the Code or such regulations, which change or amendment is not enacted or adopted on or prior to December 31, 1979; or

(vii) any act, or failure to act, at any time, by the Owner or any of its officers, employees or agents, which is inconsistent with the Owner's obligations under the Trust Agreement and the Participation Agreement, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing; or

(viii) the inability of the Lessor or its assignee for any reason to distribute all or any of the income derived by it from the rentals payable under this Lease and the deductions attributable to such income, to the Owner or to any assignee of the Owner pursuant to the provisions of Subpart E of Subchapter J of Chapter I, Subtitle A of the Code.

(c) Proceedings. If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which the Lessee would be required to indemnify the Owner pursuant to this § 16, the Owner shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Owner shall promptly request from Messrs. Donovan Leisure Newton & Irvine, or such other independent tax counsel as may be selected by the Owner and approved by the Lessee (the "Special Tax Counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Owner receives within 30

days after such notice a written request to do so from the Lessee, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of any intermediate appellate court, the Owner shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Owner shall appeal such decision. The Owner, in its sole discretion, shall determine the initial and any appellate court and shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to indemnify the Owner in a manner satisfactory to it for any Loss that results from an adverse determination with respect to the proposed adjustment and shall have agreed to pay to the Owner on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Owner elects to pay taxes based on a proposed deficiency and sue for a refund thereof, and if the proposed deficiency would be a Loss with respect to which the Lessee would be required to indemnify the Owner, then the Lessee shall pay to the Owner on demand the amount of such taxes and interest thereon which the Owner shall have paid, and if the Owner subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by the Owner from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that, if the Lessee has properly requested such action pursuant to this paragraph (c), the Owner notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will

result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time and taking into account the tax benefits that will inure to the Owners as a result of the events or construction resulting in such Loss. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, (B) the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to the Owner pursuant to the next-to-last sentence of paragraph (c) of this § 16 which has not been repaid by the Owner to the Lessee pursuant to such sentence. The Owner shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this § 16 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation or other deductions to which the Owner is or expects to be entitled with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation or other deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this § 16, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this § 16 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 16, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this § 16; and (3) in the case of a Loss

that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded.

The Lessee shall pay to the Owner a lump-sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 becomes unconditional, (A) with respect to a Loss described in clause (i) of paragraph (a) of this § 16, and (B) with respect to any other Loss, if (x) the Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional on or after the termination of this Lease or (y) the Lessor or the Lessee so elects. Any other indemnity payable pursuant to this § 16 shall be structured as level future rent increases, and the Lessee shall commence payment of such increased rent on the first rental payment date after Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional.

(e) Adjustment of Casualty and Termination Values.

In the event that the Lessee shall be required to indemnify the Owner pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty and Termination Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence or Termination with respect thereto; provided, however, that such Casualty and Termination Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA.

(f) Definition of Owner. For purposes of this § 16, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(g) Payments of Indemnity. All payments of indemnity made pursuant to this § 16, whether paid in a lump sum or in the form of increases in future rental payments, shall be made by the Lessee directly to the Owner by transfer of immediately available funds to the account of the Owner specified in paragraph (c) of Section 2.01 of the Trust Agreement or to such other account or in such other manner as the Owner from time to time shall have identified in written instructions given to the Lessee.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay interest on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to the lesser of 10-3/4% and the maximum rate permitted by law.

§ 17A. Mileage. During the original term of this Lease and the extended term hereof, if any, the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowances, rentals and/or compensation payable by carriers by reason of the use of any Unit (hereinafter called "Mileage") leased to the Lessee hereunder. It is understood and agreed that if for any reason the Lessor receives any Mileage, then (unless an Event of Default specified in § 10 shall have occurred and be continuing) the Lessor shall promptly remit such Mileage to the Lessee.

§ 18. Notices. Any notice (or report pursuant to § 8 hereof) required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department; and

(b) if to the Lessee, at P. O. Box 30321, Raleigh, North Carolina 27612, Attention of Transportation Department, with a copy to the Lessee at High Ridge Park, Stamford, Connecticut 06904, Attention of Law Department,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 501 Boylston Street, Boston, Massachusetts 02117, Attention of Investment Department, and to the Owner at 2700 Sanders Road, Prospect Heights, Illinois 60070, Attention of Carl W. Giessel, Vice President.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition

or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Trust Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee and, so long as the CSA Indebtedness or any other obligation of the Lessor under the CSA remains outstanding and if such variation, modification or waiver shall materially affect the interests of the Vendor, approved by the Vendor.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited.

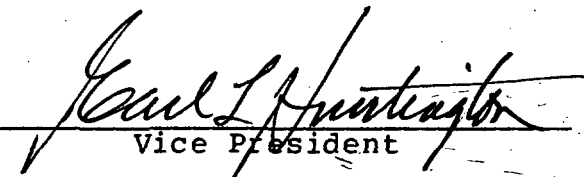
§ 22. Definitions. Whenever the term "Lessor" is used in this Lease, it shall also include the Owner and any assignee of the Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 hereof), shall, except for purposes of any assignment of the "Lessor's" rights under this Lease, refer only to the Owner or such assignee of the Owner.

§ 23. Concerning the Lessor. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal warranties, representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate, as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for its wilful misconduct or gross negligence, or against the Owner on account of any warranty, representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through, or under it, making claims hereunder may look to the Trust Estate for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

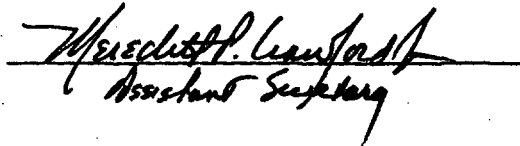
TEXASGULF INC.,

by

  
Vice President

[Corporate Seal]

Attest:

  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee  
as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

STATE OF CONNECTICUT, )  
 ) ss.:  
 COUNTY OF FAIRFIELD, )

On this 20<sup>th</sup> day of JUNE 1979, before me personally appeared EARL L. HUNTINGTON, to me personally known, who, being by me duly sworn, says that he is a Vice President of TEXASGULF INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*L. M. Hirsch*

Notary Public

[Notarial Seal]

L. M. HIRSCH  
 NOTARY PUBLIC

My Commission expires MY COMMISSION EXPIRES MARCH 31, 1982

STATE OF CONNECTICUT, )  
 ) ss.:  
 COUNTY OF HARTFORD, )

On this            day of            1979, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE 1 to LEASE

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base</u>		<u>Road Numbers (Inclusive)</u>	<u>Assumed Time and Place of Delivery</u>
						<u>Price*</u>	<u>Total Base Price</u>		
Thrall Car Manufacturing Company	100-ton Covered Hopper with continuous trough hatches	LO	No. HC-100-47- 171 constructed under Builder's Job Order No. 736-B	Chicago, Heights, Illinois	200	\$ 35,025	\$7,005,000	TGSX 443001- TGSX 443200	June 1979 at Indianola, Iowa

\* Includes inspection and engineering costs but is subject to increase or decrease in accordance with the Purchase Orders. Such Unit Base Price shall also be increased by an amount equal to the Builder's cost of transporting and insuring the units of Equipment from Builder's plant to Indianola, Iowa.

SCHEDULE 2 TO LEASE  
CASUALTY VALUES

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
9/15/79	106.7337
10/15/79	107.0183
11/15/79	107.3052
12/15/79	107.5945
1/15/80	107.8172
2/15/80	108.0418
3/15/80	108.2683
4/15/80	108.4745
5/15/80	108.6826
6/15/80	108.8925
7/15/80	109.0819
8/15/80	109.2731
9/15/80	109.4660
10/15/80	109.6384
11/15/80	109.8125
12/15/80	109.9881
1/15/81	110.1431
2/15/81	110.2996
3/15/81	110.4576
4/15/81	110.5979
5/15/81	110.7395
6/15/81	110.8826
7/15/81	111.0078
8/15/81	111.1343
9/15/81	111.2622
10/15/81	111.3720
11/15/81	111.4832
12/15/81	111.5955
1/15/82	111.6898
2/15/82	111.7852
3/15/82	111.8818
4/15/82	111.9620
5/15/82	112.0433
6/15/82	112.1257
7/15/82	112.1916
8/15/82	105.6881
9/15/82	105.7560
10/15/82	105.8074
11/15/82	105.8597
12/15/82	105.9129

Payment DatePercentage of  
Purchase Price

1/15/83	105.9495
2/15/83	105.9869
3/15/83	106.0250
4/15/83	106.0485
5/15/83	106.0726
6/15/83	106.0974
7/15/83	106.1073
8/15/83	106.1179
9/15/83	106.1291
10/15/83	106.1253
11/15/83	106.1221
12/15/83	106.1194
1/15/84	106.1017
2/15/84	106.0845
3/15/84	106.0677
4/15/84	106.0377
5/15/84	106.0081
6/15/84	105.9789
7/15/84	105.9363
8/15/84	99.3235
9/15/84	99.1764
10/15/84	99.0152
11/15/84	98.8535
12/15/84	98.6913
1/15/85	98.5149
2/15/85	98.3380
3/15/85	98.1611
4/15/85	97.9722
5/15/85	97.7832
6/15/85	97.5941
7/15/85	97.3930
8/15/85	97.1918
9/15/85	96.9905
10/15/85	96.7770
11/15/85	96.5634
12/15/85	96.3496
1/15/86	96.1237
2/15/86	95.8976
3/15/86	95.6712
4/15/86	95.4344
5/15/86	95.1974
6/15/86	94.9601
7/15/86	94.7124
8/15/86	87.8939
9/15/86	87.6455

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
10/15/86	87.3868
11/15/86	87.1277
12/15/86	86.8682
1/15/87	86.5982
2/15/87	86.3278
3/15/87	86.0571
4/15/87	85.7776
5/15/87	85.4977
6/15/87	85.2174
7/15/87	84.9284
8/15/87	84.6389
9/15/87	84.3489
10/15/87	84.0503
11/15/87	83.7511
12/15/87	83.4514
1/15/88	83.1430
2/15/88	82.8340
3/15/88	82.5245
4/15/88	82.2081
5/15/88	81.8911
6/15/88	81.5736
7/15/88	81.2491
8/15/88	80.9241
9/15/88	80.5985
10/15/88	80.2659
11/15/88	79.9328
12/15/88	79.5991
1/15/89	79.2584
2/15/89	78.9171
3/15/89	78.5748
4/15/89	78.2269
5/15/89	77.8780
6/15/89	77.5281
7/15/89	77.1726
8/15/89	76.8160
9/15/89	76.4584
10/15/89	76.0952
11/15/89	75.7309
12/15/89	75.3655
1/15/90	74.9945
2/15/90	74.6225
3/15/90	74.2493
4/15/90	73.8722
5/15/90	73.4939
6/15/90	73.1145

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
7/15/90	72.7313
8/15/90	72.3468
9/15/90	71.9612
10/15/90	71.5718
11/15/90	71.1811
12/15/90	70.7893
1/15/91	70.3936
2/15/91	69.9967
3/15/91	69.5984
4/15/91	69.1950
5/15/91	68.7902
6/15/91	68.3840
7/15/91	67.9763
8/15/91	67.5672
9/15/91	67.1567
10/15/91	66.7447
11/15/91	66.3313
12/15/91	65.9165
1/15/92	65.5003
2/15/92	65.0827
3/15/92	64.6633
4/15/92	64.2422
5/15/92	63.8194
6/15/92	63.3948
7/15/92	62.9685
8/15/92	62.5404
9/15/92	62.1106
10/15/92	61.6791
11/15/92	61.2458
12/15/92	60.8108
1/15/93	60.3740
2/15/93	59.9355
3/15/93	59.4952
4/15/93	59.0531
5/15/93	58.6093
6/15/93	58.1637
7/15/93	57.7164
8/15/93	57.2673
9/15/93	56.8164
10/15/93	56.3637
11/15/93	55.9093
12/15/93	55.4531
1/15/94	54.9952
2/15/94	54.5354
3/15/94	54.0738

Payment DatePercentage of  
Purchase Price

4/15/94	53.6102
5/15/94	53.1446
6/15/94	52.6771
7/15/94	52.2077
8/15/94	51.7363
9/15/94	51.2630
10/15/94	50.7877
11/15/94	50.3105
12/15/94	49.8312
1/15/95	49.3502
2/15/95	48.8670
3/15/95	48.3820
4/15/95	47.8949
5/15/95	47.4059
6/15/95	46.9149
7/15/95	46.4219
8/15/95	45.9269
9/15/95	45.4299
10/15/95	44.9309
11/15/95	44.4301
12/15/95	43.9272
1/15/96	43.4223
2/15/96	42.9154
3/15/96	42.4064
4/15/96	41.8955
5/15/96	41.3825
6/15/96	40.8674
7/15/96	40.3504
8/15/96	39.8313
9/15/96	39.3101
10/15/96	38.7869
11/15/96	38.2617
12/15/96	37.7344
1/15/97	37.2051
2/15/97	36.6738
3/15/97	36.1403
4/15/97	35.6049
5/15/97	35.0674
6/15/97	34.5278
7/15/97	33.9861
8/15/97	33.4425
9/15/97	32.8967
10/15/97	32.3489
11/15/97	31.7991
12/15/97	31.2472

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
1/15/98	30.6932
2/15/98	30.1372
3/15/98	29.5803
4/15/98	29.0226
5/15/98	28.4640
6/15/98	27.9047
7/15/98	27.3445
8/15/98	26.7836
9/15/98	26.2220
10/15/98	25.6596
11/15/98	25.0965
12/15/98	24.5327
1/15/99	23.9683
2/15/99	23.4032
3/15/99	22.8375
4/15/99	22.2712
5/15/99	21.7043
6/15/99	21.1368
7/15/99	20.5689
8/15/99	20.0000

SCHEDULE 3 TO LEASE  
TERMINATION VALUES

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
8/15/89	78.0251
8/15/94	51.7363
2/15/95	48.8670
8/15/95	45.9269
2/15/96	42.9154
8/15/96	39.8313
2/15/97	36.6738
8/15/97	33.4425
2/15/98	30.1372
8/15/98	26.7836
2/15/99	23.4032
8/15/99	20.0000

## EXHIBIT A

## CERTIFICATE OF ACCEPTANCE

Dated: , 1979, at Indianola, Iowa.

## TO THRALL CAR MANUFACTURING COMPANY:

I, a duly appointed and authorized representative of Texasgulf Inc. (the "Lessee"), the duly authorized representative and agent of The Connecticut Bank and Trust Company, as Trustee (the "Owner-Trustee"), do hereby certify that the units of railroad equipment specified in Annex A hereto have been inspected and approved at your plant, and delivery thereof has been received and accepted at Indianola, Iowa, on behalf of the Lessee under a Lease of Railroad Equipment dated as of March 15, 1979, between the Lessee and the Owner-Trustee and on behalf of the Owner-Trustee under a Conditional Sale Agreement dated as of March 15, 1979, between the Owner-Trustee, as Trustee for Thirteenth HFC Leasing Corporation and Thrall Car Manufacturing Company.

I do further certify that the foregoing cars are in good order and condition and conform to the specifications applicable thereto and to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards if any recommended by the Association of American Railroads reasonably interpreted as being applicable to each such unit of equipment.

In addition, I further certify that there was plainly, distinctly, permanently and conspicuously placed, in letters not less than one inch in height, the following legend:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION".

The execution of this Certificate will in no way relieve Thrall Car Manufacturing Company of its duty or decrease its responsibility to produce and deliver the railroad equipment indicated above in accordance with the terms of a Conditional Sale Agreement dated as of March 15, 1979, covering such equipment, subject to any warranties therein contained.

---

Duly Appointed and Authorized  
Representative of TEXASGULF INC.,  
the Agent for THE CONNECTICUT  
BANK AND TRUST COMPANY, as  
Trustee

## ANNEX A TO CERTIFICATE OF ACCEPTANCE

Type of Cars: 100-ton covered hopper with continuous trough  
hatches

Place Accepted: Indianola, Iowa.

No. of  
Units

Date Accepted

Road Nos.

---

LEASE OF RAILROAD EQUIPMENT

Dated as of March 15, 1979

between

TEXASGULF INC.

and

THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee

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## Lease of Railroad Equipment

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LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1979, between TEXASGULF INC., a Texas corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Thirteenth HFC Leasing Corporation (the "Owner").

WHEREAS pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor, the Owner, HFC Leasing Inc. and New England Mutual Life Insurance Company (hereinafter, with its successors and assigns, called the "Vendor"), the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Thrall Car Manufacturing Company (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (the "Equipment");

WHEREAS the Builder is assigning its interest in the CSA to the Vendor;

WHEREAS the Lessor is assigning its interest in this Lease to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"); and

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, any abatement, reduction or setoff due, or

alleged to be due, by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Owner or the Vendor or otherwise; provided, however, that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, any prohibition or restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding involving the Lessee, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and, except as herein provided, the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to determine that each Unit has been delivered in good order and, if such Unit is found to be in good order and has been inspected and approved by an authorized representative of the Lessee at the Builder's plant, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certif-

icate of acceptance (the "Certificate of Acceptance") in the form set forth in Exhibit A hereto in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date set forth in such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease, in arrears, one interim and 240 consecutive monthly rental payments. The interim rental payment for each Unit subject to this Lease is payable on August 15, 1979, and shall be in an amount equal to the product of the Purchase Price for such Unit (as defined in the CSA) multiplied by 0.026712% for each day elapsed from and including the Closing Date (as defined in the CSA) for such Unit to but not including August 15, 1979. The 240 monthly rental payments shall be paid as follows: (i) the first 60 of such rental payments shall each be in an amount equal to 0.5915% of the Purchase Price of each such Units then subject to this Lease, and shall be payable on the fifteenth day of each month, commencing September 15, 1979; and (ii) the remaining 180 rental payments shall each be in an amount equal to 0.6966% of the Purchase Price of each such Unit then subject to this Lease, and shall be payable on the fifteenth day of each month, commencing September 15, 1984. In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor, as additional rental on August 15, 1979, an amount equal to the payment required to be made by the Lessor pursuant to the proviso of the first sentence of Paragraph 9 of the Participation Agreement.

The Lessee and the Lessor agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule 2 hereto and the Termination Value percentages set forth in Schedule 3 hereto will be adjusted upward or downward to reflect (A) any amendment to, or change in, the Internal Revenue Code of 1954, as amended (the "Code"), the income tax regulations thereunder or published adminis-

trative interpretations of the Code or such regulations, which change or amendment is enacted or adopted on or before December 31, 1979, and (B) the delivery of any Unit or Units after June 30, 1979. Such adjustments will be effective as of the rental payment date next following such amendment or change, or such difference in delivery schedule, as the case may be, and will be made in such manner as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owner had such amendment or change, or such difference in delivery schedule, as the case may be, not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time. Notwithstanding anything herein, the rentals payable and Casualty Value and Termination Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy its obligations under the CSA and to satisfy the pretax cash flow and profit requirements of Section 4(6) of Rev. Proc. 75-21, 1975-1 Cum. Bul. 715. The Owner shall furnish the Lessee and the Vendor prior to the effective date of such adjustments with a notice setting forth in reasonable detail the computations and methods used in computing the adjustments.

If any rental payment date referred to above is not a business day the rental otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, Hartford, Connecticut, New York, New York, or Houston, Texas, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee (i) as long as any of the CSA Indebtedness (as defined in the CSA) is outstanding, to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, to the extent such payments are required to satisfy the obligations of the Lessor under the CSA, to the Vendor, at the address and by the method specified in the Consent and Agreement, dated as of the date hereof, attached to the Lease Assignment (the "Consent"), for the account of the Lessor, and (ii) subject to the provisions of the Lease Assignment, so long as no event of default specified in Article 15 of the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at the address set forth herein or at such other place as the Lessor

shall specify in writing unless and until the Vendor shall otherwise direct the Lessee in writing; provided, however, that the Lessee shall make all payments provided for in §§ 6, 9 and 16 hereof directly to the person entitled to receive them, as provided in the Lease Assignment. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor or the Lessor, as the case may be, by 11:00 a.m., New York time, on the date such payment is due. From and after the date of payment in full of all obligations of the Lessor under the CSA, all such payments shall be made directly to the Lessor.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10, 13, 13A and 14 hereof, shall expire on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee under §§ 6, 7, 9, 10, 11, 12, 14 and 16 hereof shall survive the expiration or any termination of the term of this Lease; provided, however, that notwithstanding anything to the contrary contained herein, the Lessee shall not be required to indemnify the Lessor, the Owner, the Vendor or any assignee of any of such parties for any claim which arises solely from acts, events or conditions which occur or come into being after the expiration or any termination of the original term or extended term, if any, of this Lease; provided further that in the event any of the Units are stored as provided in § 11 or § 14 hereof, the obligations of the Lessee pursuant to §§ 7 (third and fourth paragraphs only), 9 (third paragraph only), 10, 11, 12 (fourth paragraph only) and 14 hereof shall survive expiration of the original term or extended term, if any, of this Lease with respect to acts, events or conditions which occur or come into being before the termination of the storage period.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and remedies of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Payments (as defined

in the Lease Assignment) are being made to the Vendor, and the Vendor is entitled to apply the Payments in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under § 12 hereof.

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto or, in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, and that no other filing, deposit or giving of notice with any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor (in both its individual and fiduciary capacities) for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes except as provided in the second paragraph of this § 6 (other than any United States Federal income tax payable by the Lessor and other than the aggregate of all state or local taxes on or measured by net income and value added taxes in lieu of such net income taxes, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided, all of which taxes, which are excluded from the term "imposition" hereunder being referred to as "excluded taxes") or license fees, assessments, charges or fines, or penalties with respect to any of the foregoing (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title of the Units under the terms hereof or the CSA, each and every such imposition the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein unless such imposition results from (i) any Federal, state or local minimum tax imposed on or with respect to items of tax preference or any similar tax; (ii) sale or use taxes which are part of the amount payable by the Lessor or the Owner under the CSA and which are included in the Purchase Price of the Units; (iii) any income taxes on or based on or measured by any fees or compensation received by the Lessor as Trustee for services rendered in connection with the transactions contemplated in this Lease and the Participation Agreement and related documents; or (iv) any impositions with respect to the sale, exchange, transfer or other disposition of all or any part of the Lessor's or the Owner's respective interest in the Units, the Lease or the Trust Estate (as defined in the Trust Agreement), except pursuant to the exercise of any remedy upon an Event of Default and except for any sales or similar tax imposed with respect to any purchase which may be made by the Lessee pursuant to the provisions hereof. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the

Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or of the Lessor or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of any such contest brought in the Lessee's name prior to or within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

Any liability of the Lessee for foreign taxes imposed on the Lessor shall not be deemed to be an imposition within the meaning of this § 6 to the extent that the Lessor receives (a) a credit in whole or part therefor against any liability it may have for excluded taxes and (b) the United States tax benefit of a deduction therefor which reduces the Lessor's liability for such excluded taxes.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the CSA not covered by the foregoing paragraphs of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions

hereunder) to the Lessor to fulfill completely the Lessor's obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee, where permitted by law, will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such returns, statements or reports to them within a reasonable period of time prior to the time such returns, statements or reports are to be filed in such manner as shall be satisfactory to them; provided, however, that, in the case of returns, statements or reports prepared and filed by the Lessee, if in the reasonable opinion of the Lessee any such returns, statements or reports contain information confidential to the Lessee, the Lessee shall submit to the Lessor in lieu of the foregoing returns, statements or reports, a statement of the Lessee's auditors, Peat, Marwick, Mitchell & Co. (or such other auditor as may be reasonably approved by the Lessor), listing all such returns, statements and reports stating that the Lessee has made all such returns, statements and reports, showing the interest of the Lessor and the Vendor to the extent permitted by law and verifying that the statements made by the Lessee in such returns, statements or reports accurately reflect therein all relevant information as to the Units.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action, but only such action, reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such action unless the Lessee shall first have

indemnified the Lessor for all liabilities and expenses which may be entailed therein. The Lessee shall indemnify and hold the Lessor (in both its individual and fiduciary capacities) harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred as a result of, or incident to, any action taken by the Lessor or the Lessee under this § 6; provided that any action taken by the Lessor shall be consistent with the action reasonably requested by the Lessee in accordance with the first sentence of this paragraph. The Lessee shall be entitled to any refund (plus interest, if any) received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances with respect to, or furnish other evidence satisfactory to the Lessor of, the Lessee's performance of its duties under this § 6; provided, however, that the Lessee's auditors, Peat, Marwick, Mitchell & Co. (or such other auditors as may be reasonably approved of by the Lessor) verifying that the Lessee has filed any particular return and paid any particular imposition involving the Units for any specific period of time shall be satisfactory evidence of performance of the Lessee's obligations under this paragraph of § 6 as to the matters referred to in such auditor's statement. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions, including, but not limited to, data as to any use of any Unit outside the United States of America.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment and such imposition on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that the Lessor would have had or been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Termination; Insurance. The Lessee agrees that, at the Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for interchange service under the applicable rules of the American Association of Railroads (or any of its successors).

In the event that any Unit shall be or become physically worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the CSA or for an indefinite period, but only when such indefinite period shall have exceeded the term of the CSA, or by any political subdivision of the United States of America or any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit), subject to the provisions of the fifth paragraph of this § 7, the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date; provided, however, that if the Casualty Value for any Unit

as of such payment date as determined pursuant to Schedule 2 hereof reflects an amount representing investment credit recapture to the Owner that is greater or less than the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence with respect to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence with respect to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original term hereof or the extended term hereof, if any, and before the end of the storage period provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be (i) 20% of the Purchase Price of such Unit, in the case of a Casualty Occurrence after the expiration of the original term hereof, and (ii) the Casualty Value of such Unit applicable on the last day of the extended term, in the case of a Casualty Occurrence after the expiration of the extended term. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis, such disposition and all expenses related thereto to be at Lessee's cost and expense. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or by any political subdivision of the United States of America or by any other governmental entity (hereinafter called the "Government") of any Unit during the term of this Lease, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if

such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or § 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee shall, at its sole expense, obtain and maintain in full force and effect from the time any Unit is accepted by the Lessee and throughout the term of this Lease and during any storage period as provided in § 11 or § 14 hereof, on the Units from time to time subject hereto, with such insurers as are reasonably satisfactory to the Lessor and the Vendor (i) insurance in the amount per occurrence of at least the lesser of (x) \$5,000,000 and (y) the aggregate Casualty Value of the Units then subject to this Lease against all risks of physical loss of, or damage to, the Units and (ii) public liability and property damage insurance in the amount of at least \$20,000,000 per occurrence covering liability for personal injuries, death or property damage resulting from the ownership, maintenance, use or operation of the Units; provided, however, that in the case of property insurance, the Lessee, at its option, may self-insure the Units to the extent it typically self-insures similar equipment and to the extent such self-insurance, including any program of risk assumption, is consistent with prudent industry practice. All insurance policies required hereby shall, without limitation of the foregoing,

(i) require 30 days' prior written notice of cancellation or material change in coverage to the Lessor, the Owner and the Vendor and (ii) name the Lessor (in both its individual and fiduciary capacities), the Owner and the Vendor as loss payees as their respective interests may appear, in the case of property insurance, and as additional named insureds, in the case of liability insurance, and (iii) shall provide that in respect of the interests of the Lessor, the Owner and the Vendor in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor, the Owner and the Vendor) and shall insure the Lessor, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor, the Owner or the Vendor). The Lessee shall furnish to the Lessor and the Vendor prior to the acceptance date of any Unit and upon request throughout the term of this Lease (i) evidence of insurance satisfactory to the Lessor and the Vendor showing the existence of the insurance required hereunder and (ii) if the Lessee self-insures or intends to self-insure any Unit in respect of property insurance, a certificate of the Lessee to the effect that the Lessee typically self insures equipment similar to such Unit in respect of property insurance and that such self-insurance, including any program of risk assumption of the Lessee, is consistent with prudent industry practice. The property insurance referred to in this § 7 may be written with such deductible amounts as the Lessee deems appropriate but not in excess of deductible amounts applicable to property insurance carried by the Lessee on other railroad rolling stock owned or operated by the Lessee and, in any event, only to the extent such deductible amounts are consistent with prudent industry practice.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Vendor, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Vendor for all reasonable expenditures made by the Lessor or the Vendor for such insurance, together with interest thereon computed at the maximum rate of interest permitted by law, but not more than 10-3/4% per annum, from the date of the Vendor's or the Lessor's payment until reimbursed by the Lessee.

If the Lessor shall receive any insurance proceeds (other than on policies for which the Lessor has paid premi-

ums) or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to such Unit having suffered a Casualty Occurrence and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired and so long as no Event of Default (as defined in § 10 hereof) is continuing under this Lease.

In the event that the Lessee shall, in its reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the chief executive officer of the Lessee and as certified as such by the Lessee to the Lessor and the Vendor, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all but not less than all of such Units as of any succeeding rental payment date specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall be (x) on August 15, 1989, or (y) not earlier than August 15, 1994, nor later than August 15, 1999 (the Termination Date to be on February 15 or August 15 of the year in which the Termination occurs), (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date, and (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any

party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to each such Unit an amount equal to (i) the excess, if any, of the Termination Value (as hereinafter defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Lessor in connection with such sale and (ii) the rental payment with respect to each such Unit due on such Termination Date. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 3 hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to such Units as of such Termination Date.

If no sale of the Units shall occur on the Termination Date with respect thereto as provided above, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Lessor an amount equal to the Termination Value of such Unit as of such Termination Date and any rental payment due with respect thereto on such Termination Date and returns any unsold Unit to the Lessor pursuant to § 14 hereof.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all of the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to any such Unit, elect to retain such Unit, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to such Unit, the Lessee shall deliver such Unit to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. Reports and Inspections. On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor, the Owner and the Vendor (a) an accurate statement (i) setting forth as at the preceding December 31 the quantity, description and road numbers of all Units then leased hereunder, the quantity, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Units pursuant to § 7 hereof, and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts, including deductible amounts, of such insurance in effect. The Lessor, at its sole cost and expense, shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto as may be reasonably necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease, all at such reasonable times as the Lessor shall request. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Units pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports required to be furnished pursuant to Paragraph 8 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Article 13 of the CSA or of Annex A of the CSA or any other claims the Lessor may have against the Builder or others relating to the quality or performance of any Unit, any of its components or its design or construction, whether such claims be based in contract (including breach of warranty) or tort; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following (except as arise solely from acts of the Lessor not contemplated by this Lease, the Participation Agreement or the documents referenced herein and therein): (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of

a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules of the Association of American Railroads (or any of its successors), the violation of which laws or rules would subject the Lessor to legal or administrative remedies or could adversely affect the Lessor's ownership interest in the Units or the security interests of the Vendor in the Units, the CSA or the Lease, to the extent that such laws or rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal hereof and prior to the return of such Units to the Lessor pursuant to § 11 or § 14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service under the rules of the Association of American Railroads (or any of its successors) or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

Any additions, modifications and improvements made to any Unit by the Lessee (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities), the Owner and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort and claims in which negligence, whether active or passive, or breach of warranty or contract of such indemnified party is alleged) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, except, for the purposes of this § 9, for any liability for taxes of any nature imposed on the Lessor, the Owner, the Vendor or any assignee of any such party, whether or not the Lessee has agreed to indemnify against any such taxes under any other section of this Lease, arising out of or as the result of the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the CSA, the Participation Agreement, this Lease or any sublease entered into pursuant to § 12 hereof, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit, the compliance or noncompliance by the Lessee with any applicable law, rule or regulation with respect to the use, maintenance or operation of any Unit, or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Units by the Vendor pursuant to any provision of the CSA; provided, however, that the Lessee shall not be required to indemnify any party indemnified hereunder in respect of such party's wilful misconduct

or gross negligence. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 11 or § 14 of this Lease, notwithstanding such expiration, termination and return; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the CSA Indebtedness and shall not be deemed to operate as a guarantee of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee as a result of which liability may be charged against the Builder under the CSA.

Except as provided in § 7 hereof, the Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns, except as provided in § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by

reason of the ownership of the Units by the Lessor or the interest of the Vendor therein or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur and be continuing:

(a) default shall be made in payment of any amount due under § 3, § 7 or § 13A of this Lease and such default shall continue for five business days, or default shall be made in payment of any other amount due under this Lease and such default shall continue for five business days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled and to recover possession of such Units within 15 days after written notice from the Lessor or the Vendor to the Lessee demanding the same;

(c) any of the representations and warranties of the Lessee contained in the Participation Agreement shall be or have been incorrect in any material respect as of the date when made and continue to be incorrect, or default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or in the Consent, in any of such cases continuing for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied; or

(d) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Lessee or of a major part of its property is appointed by order of any court of competent jurisdiction in the United States of America or in any other place where the Units may be used by the Lessee and such

order remains in effect for more than 60 days; or the Lessee is adjudicated bankrupt or insolvent by such court; or a major part of its property is sequestered by order of such court and such order remains in effect for more than 60 days; or a petition is filed against the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 60 days after such filing;

(ii) Voluntary Petitions--the Lessee files a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt, or consents to the appointment of a receiver, trustee or liquidator of the Lessee or of all or a major part of its property;

then, in any such case, the Lessor, at its option, may:

(x) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including amounts sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of the receipt of such damages and amounts on its United States Federal income tax and state and local taxes or franchise taxes based on net income, that the Lessor would have realized or would have been in had such breach not occurred;  
or

(y) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the

use of the Units shall terminate as though this Lease had never been made, but the Lessee shall remain liable under this Lease to the extent that this Lease provides that the obligations of the Lessee under this Lease shall survive a termination or expiration thereof; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, sell, operate, lease to others and enjoy the same free from any right of the Lessee to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time after deduction of all reasonably estimated expenses and costs in connection with such sale; provided, however, that, in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this paragraph (y) with respect to such Unit, shall have a right to recover from the Lessee, and the Lessee shall pay to the Lessor, in addition to any amount payable to the Lessor by the Lessee pursuant to §§ 6, 9 and 16 hereof, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale (after deduction of all reasonable expenses and costs in connection with such sale).

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due under this

Lease before, during or after the exercise of any of the foregoing remedies and shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives (i) any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law and (ii) any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf against any other party (which claim, if any, the Lessee reserves the right to assert separately against any such party). The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the events set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such events or similar events.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take, or cause to be taken by its agent or agents, immediate possession of each of the Units, and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered and any modification or addition permitted or required to be attached to

such Unit pursuant to this Lease shall be in the same operating order, repair and condition as when originally delivered to the Lessee or attached to such Unit, as the case may be, ordinary wear and tear excepted, the standard for ordinary wear and tear to be that wear and tear which would have been suffered by units of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in units of such type by common carriers. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessee may designate and as may be satisfactory to the Lessor;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on any lines of railroad or to any connecting carrier for shipment within the United States of America, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective

purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned and accrued in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day after such termination to the date of delivery of such Unit to the Lessor an amount equal to the amount, if any, by which (x) the product of (i) a fraction the numerator of which is  $9\frac{3}{4}\%$  and the denominator of which is 360, and (ii) the Purchase Price of such Unit exceeds (y) the actual earnings received by the Lessor with respect to such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Units pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use; Discharge of Liens. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the conditions specified in the proviso to the last paragraph of § 4 hereof are satisfied, the Lessee shall be entitled to the possession, quiet enjoyment and use of the Units, provided that the Lessee may not, except with the Lessor's prior written consent, which shall not be unreasonably withheld, (a) sublease any of the Units to any other person for a term or terms that aggregate more than eight months in any one year or (b) permit any of the Units

to be used by any other person, except for usage thereof in normal interchange service, any such usage to be subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the continental United States of America; provided, further, however, that, subject to the provisions of § 15 hereof, the Lessee may assign or permit the assignment of any Unit to occasional service in Canada. Notwithstanding the immediately preceding proviso, no Unit shall be used predominantly outside the United States of America within the meaning of Section 48(a) of the Code, nor shall the Lessee sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "Section 38" property within the meaning of the Code. Except as set forth in the last paragraph of this § 12, the Lessee may not assign this Lease to any other person. No sublease or usage permitted by the foregoing shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default thereunder or an Event of Default hereunder and no such sublease shall relieve the Lessee of its obligations to the Lessor under this Lease. Any rentals payable under any sublease permitted or consented to pursuant to this § 12 shall not be assigned to the Lessor or the Vendor as security for the Lessee's obligations hereunder and shall be for the account of and be retained by the Lessee irrespective of whether or not such rentals exceed the rentals payable by the Lessee to the Lessor.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance created by or through the Lessor, the Owner, the Vendor or their respective assignees or resulting from claims against the Lessor, the Owner, the Vendor or their respective assignees not related

to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the reasonable opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the CSA.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in all but not less than all the Units or possession of all but not less than all the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or, with the prior written consent of the Lessor and the Vendor, property of the Lessee related to the operation of the Units or a portion thereof; provided, however, that (i) such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and will have a consolidated net worth determined in accordance with generally accepted accounting principles not less than that of the Lessee immediately prior to such transaction and (ii) in the case of any such acquisition of less than all or substantially all of the property of the Lessee, such acquisition shall not alter in any way the Lessee's obligation to the Lessor and the Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Right of Refusal. Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is continuing hereunder, in the event the

Lessor, in its sole discretion, elects to sell the Units to third parties at the expiration of the original term of this Lease or the extended term thereof, if any, the Lessee shall be given written notice of such intention prior to the expiration of such term (or extended term, if any). Within 20 business days of receipt of notice from the Lessor of the intention to sell, the Lessee may exercise a purchase right at the then Fair Market Value of the Units by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than 10 days after determination, pursuant to this § 13, of the Fair Market Value of the Units. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date of expiration of such term (or extended term, if any) of this Lease until the date of such purchase.

Upon payment of the purchase price of the Units by the Lessee, as provided above, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties (except as to the Lessor's title being free and clear of any lien created by or through the Lessor)) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such forms as may reasonably be requested by the Lessee, all at the Lessee's expense.

Fair Market Value shall be agreed upon by the Lessor and the Lessee or determined as provided in the next paragraph, on the basis of (and shall be equal in amount to) the sale value which would obtain in an arm's-length transaction between an informed and willing vendee under no compulsion to buy and an informed and willing vendor under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such sale value, but there shall be excluded any sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that in the determination of Fair Market Value, the existence of the Lessee's right of refusal pursuant to this § 13 shall be disregarded. Fair Market Value of the Units shall be determined upon the assumption that the Units shall have been maintained in accordance with the provisions of

§ 7 hereof, without regard to any limitation contained in the second paragraph of § 9 of this Lease on the Lessee's duty to comply with applicable laws and rules.

If after 15 days from the giving of notice by the Lessee of the Lessee's election to exercise its right to purchase the Units as provided in this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value, such Fair Market Value shall be determined in accordance with the provisions of the preceding paragraph of this § 13 by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall, within 30 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser appointed, pursuant to the foregoing procedure, shall be instructed to determine the Fair Market Value of the Units subject to the proposed sale within 30 days after his appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser within the time period stated above, the determination of a single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the dates thereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value, unless otherwise agreed upon by the Lessor and the Lessee as provided for in this § 13, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures or rights. The expense of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 13A. Renewal Option. (a) Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee shall have the option to extend the term of this Lease with respect to all but not less than all of the Units then subject hereto, by written notice delivered to the Lessor not less than 6 months nor more than 1 year prior to the end of the original term of this Lease, such extension to be on the conditions herein set forth:

(i) Such option shall be to extend this Lease for a period of five years, such period to commence on the scheduled date of expiration of the original term of this Lease.

(ii) In the event that the Lessee elects to exercise its option to extend this Lease, as provided for in this § 13A, such extension shall be on the same terms and conditions as are contained in this Lease, except (x) as to the amount of rentals, which shall be at a "Fair Market Rental" (as defined in this § 13A) payable monthly in arrears, (y) that no Termination shall be permitted during any extended term of this Lease and (z) that the Casualty Value of each Unit on the first day of the extended term shall be equal to the "Fair Market Value" of such Unit on such date, as determined by the procedures established in § 13 hereof, and that thereafter such Casualty Value shall be reduced on a straight line basis over the estimated remaining useful life of such Unit.

(b) Fair Market Rental shall be agreed upon by the Lessor and the Lessee or determined as provided in the next paragraph on the basis of (and shall be equal in the amount to) the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession), and an informed and willing lessor, with neither party being under any compulsion to lease, and, in such determination, costs of removal from the location of current use shall not be in deduction from such rental; provided, however, that Fair Market Rental shall be determined as provided in this sentence on the basis of the extension term and other terms and conditions of the Lease being considered, and provided further, that Fair Market Rental of the Units shall be determined upon the assumption that the Units shall have been maintained in accordance with the standards stated in § 14 hereof, and in accordance with all applicable laws and rules, whether or not required to be complied with pursuant to § 7 hereof.

(c) If after 15 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in paragraphs (a) and (b) of this § 13A, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, such Fair Market Rental shall be determined in accordance with the provisions of paragraph (b) of this § 13A by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine Fair Market Rental of the Units subject to the proposed extended Lease term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of a single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental unless such value is agreed upon by the Lessor and the Lessee as provided for in paragraph (b) of this § 13A, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. Upon the expiration of the original term or extended term of this Lease with respect to any Unit which the Lessee does not purchase pursuant to § 13 hereof, the Lessee will,

at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee (at not more than three locations) as the Lessee may reasonably designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to the nearer of (x) Chicago, Illinois and (y) any purchaser, lessee or user thereof at a location indicated to the Lessor by such party, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, the standard for ordinary wear and tear to be that wear and tear which would have been suffered by units of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in units of such type by common carriers and shall meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction provided that the Lessee shall not be required to make any additions, modifications and improvements which would not be required of the Lessee if the Lessee continued to operate the Units (but without regard to any limitation contained in the second paragraph of § 9 of this Lease on the Lessee's duty to comply with applicable laws and rules). The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day after the 60th day after such termination an amount equal to the amount, if any, by which (x) the product of (i) a fraction the numerator of which is  $9\frac{3}{4}\%$  and the denominator of which is 360, and (ii) the Purchase Price of such Unit exceeds (y) the actual earnings received by the Lessor on such Unit for each such day. Even though the Lessee shall be required to pay the amount specified in the next preceding sentence after the 60th day after such termination, the Lessee shall have 120 days after such termination to deliver possession to the Lessor of any Unit undergoing repair

at the time of such termination, but only to the extent the additional time is needed to effect the repair.

§ 15. Recording. The Lessee will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments hereof and thereof to the Vendor; provided, however, that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States of America if (1) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Lessor to and the security interest of the Vendor in not less than 90% of the total number of Units then subject to this Lease, and (2) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in § 5 hereof.

The Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the CSA and the assignments hereof and thereof shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

If the Lessee is not in default under the provisions of this Lease, any expenses incurred by the Lessee pursuant to this § 15 which are incurred as the result of any assignment by the Lessor, the Owner, the Vendor or any assignee of any such party of their respective interests in any Unit or Units to any assignee not specifically named in the Participation Agreement and related documents shall be reimbursed by the Lessor to the Lessee; provided, however, that the Lessor shall not be required to make such reimbursement until it has received reimbursement from the Owner or any assignee of the Owner's interest in any Unit or Units in the event of an assignment by the Lessor, the Owner, the Vendor

or any assignee of any such party.

§ 16. Income Taxes. (a) Loss of Assumed Tax Benefits. If,

(i) the Owner is not allowed for its calendar 1979 taxable year an investment credit under Section 38 and related sections of the Code with respect to any one or more of the Units placed under this Lease in such year of not less than 10% of the Purchase Price with respect to such Unit or Units; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation, commencing with its calendar 1979 taxable year, on any one or more of the Units placed under this Lease in such year under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have an asset depreciation period of 12 years, and (z) determined on the basis of the "modified half-year convention" of Section 1.167(a)-11(c)(2)(ii) of the income tax regulations; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the CSA; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable under the CSA shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the end of the term of this Lease (including any extended

term) in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by the Lessee (herein called a "Capital Expenditure");

(any such failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure being herein called a "Loss"), then, subject to paragraph (b) of this § 16, the Lessee shall pay to the Owner as an indemnity the amount set forth in paragraph (d) of this § 16 at the time or times set forth therein.

(b) Indemnification and Exceptions. Except as hereinafter provided, the Lessee shall be required to indemnify the Owner with respect to any Loss in the event that such Loss results from:

(A) a Loss described in clause (i) or (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b) or 167(c)(2) of the Code from commencing with the Owner or from the Lessee's use of a Unit in violation of a covenant set forth in the second sentence of the second paragraph of § 12 hereof;

(B) the Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 16;

(C) a Capital Expenditure;

(D) the inability of the Owner to depreciate any Unit to a net salvage value of zero, provided that the Owner makes the election provided for in Section 167(f) of the Code and, further provided, that any factual assumptions as to salvage value made by the Owner in filing its U.S. Federal income tax return have been based on the opinion of an expert skilled and experienced in making such determinations;

(E) any other act, or failure to act, at any time, by the Lessee or any of its officers, employees or agents (including, without limitation, any act, or failure to act, in respect of the income tax returns of the Lessee insofar as they relate to the transactions

contemplated by this Lease), it being understood that this clause (E) shall not apply to any Casualty Occurrence or Termination.

Notwithstanding anything herein contained, the Lessee shall not be required, however, to indemnify the Owner with respect to any Loss that results solely and directly from:

(i) a Casualty Occurrence or Termination, if the Lessee has made all payments with respect thereto that are required to be made pursuant to § 7 hereof;

(ii) a voluntary disposition by the Owner or by the Lessor of their respective interests in any Unit or Units, if such disposition (x) shall be the direct cause of such Loss with respect to such Unit or Units, (y) shall occur at a time while no Event of Default (and no event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee, which consent shall expressly refer to this provision and shall not be given if in the reasonable opinion of the Lessee such disposition shall cause such a Loss unless the Lessee is released from the indemnification of such Loss hereunder;

(iii) the failure of the Owner to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, unless the Owner shall have been advised by Messrs. Donovan Leisure Newton & Irvine, or other independent tax counsel selected by the Owner and approved by the Lessee (which approval shall not be unreasonably withheld), that there is no reasonable basis for claiming any such deduction or credit;

(iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income, whether net investment income or otherwise, to benefit from such depreciation or interest deductions;

(v) the failure of the Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 16;

(vi) any amendment to, or change in, the Code, the income tax regulations thereunder or published administrative interpretations of the Code or such regulations; which change or amendment is not enacted or adopted on or prior to December 31, 1979; or

(vii) any act, or failure to act, at any time, by the Owner or any of its officers, employees or agents, which is inconsistent with the Owner's obligations under the Trust Agreement and the Participation Agreement, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing; or

(viii) the inability of the Lessor or its assignee for any reason to distribute all or any of the income derived by it from the rentals payable under this Lease and the deductions attributable to such income, to the Owner or to any assignee of the Owner pursuant to the provisions of Subpart E of Subchapter J of Chapter I, Subtitle A of the Code.

(c) Proceedings. If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which the Lessee would be required to indemnify the Owner pursuant to this § 16, the Owner shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Owner shall promptly request from Messrs. Donovan Leisure Newton & Irvine, or such other independent tax counsel as may be selected by the Owner and approved by the Lessee (the "Special Tax Counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Owner receives within 30

days after such notice a written request to do so from the Lessee, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of any intermediate appellate court, the Owner shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Owner shall appeal such decision. The Owner, in its sole discretion, shall determine the initial and any appellate court and shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to indemnify the Owner in a manner satisfactory to it for any Loss that results from an adverse determination with respect to the proposed adjustment and shall have agreed to pay to the Owner on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Owner elects to pay taxes based on a proposed deficiency and sue for a refund thereof, and if the proposed deficiency would be a Loss with respect to which the Lessee would be required to indemnify the Owner, then the Lessee shall pay to the Owner on demand the amount of such taxes and interest thereon which the Owner shall have paid, and if the Owner subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by the Owner from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that, if the Lessee has properly requested such action pursuant to this paragraph (c), the Owner notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will

result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time and taking into account the tax benefits that will inure to the Owners as a result of the events or construction resulting in such Loss. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, (B) the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to the Owner pursuant to the next-to-last sentence of paragraph (c) of this § 16 which has not been repaid by the Owner to the Lessee pursuant to such sentence. The Owner shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this § 16 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation or other deductions to which the Owner is or expects to be entitled with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation or other deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this § 16, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this § 16 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 16, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this § 16; and (3) in the case of a Loss

that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded.

The Lessee shall pay to the Owner a lump-sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 becomes unconditional, (A) with respect to a Loss described in clause (i) of paragraph (a) of this § 16, and (B) with respect to any other Loss, if (x) the Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional on or after the termination of this Lease or (y) the Lessor or the Lessee so elects. Any other indemnity payable pursuant to this § 16 shall be structured as level future rent increases, and the Lessee shall commence payment of such increased rent on the first rental payment date after Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional.

(e) Adjustment of Casualty and Termination Values. In the event that the Lessee shall be required to indemnify the Owner pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty and Termination Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence or Termination with respect thereto; provided, however, that such Casualty and Termination Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA.

(f) Definition of Owner. For purposes of this § 16, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(g) Payments of Indemnity. All payments of indemnity made pursuant to this § 16, whether paid in a lump sum or in the form of increases in future rental payments, shall be made by the Lessee directly to the Owner by transfer of immediately available funds to the account of the Owner specified in paragraph (c) of Section 2.01 of the Trust Agreement or to such other account or in such other manner as the Owner from time to time shall have identified in written instructions given to the Lessee.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay interest on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to the lesser of 10-3/4% and the maximum rate permitted by law.

§ 17A. Mileage. During the original term of this Lease and the extended term hereof, if any, the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowances, rentals and/or compensation payable by carriers by reason of the use of any Unit (hereinafter called "Mileage") leased to the Lessee hereunder. It is understood and agreed that if for any reason the Lessor receives any Mileage, then (unless an Event of Default specified in § 10 shall have occurred and be continuing) the Lessor shall promptly remit such Mileage to the Lessee.

§ 18. Notices. Any notice (or report pursuant to § 8 hereof) required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department; and

(b) if to the Lessee, at P. O. Box 30321, Raleigh, North Carolina 27612, Attention of Transportation Department, with a copy to the Lessee at High Ridge Park, Stamford, Connecticut 06904, Attention of Law Department,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 501 Boylston Street, Boston, Massachusetts 02117, Attention of Investment Department, and to the Owner at 2700 Sanders Road, Prospect Heights, Illinois 60070, Attention of Carl W. Giessel, Vice President.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition

or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Trust Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee and, so long as the CSA Indebtedness or any other obligation of the Lessor under the CSA remains outstanding and if such variation, modification or waiver shall materially affect the interests of the Vendor, approved by the Vendor.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited.

§ 22. Definitions. Whenever the term "Lessor" is used in this Lease, it shall also include the Owner and any assignee of the Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 hereof), shall, except for purposes of any assignment of the "Lessor's" rights under this Lease, refer only to the Owner or such assignee of the Owner.

§ 23. Concerning the Lessor. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal warranties, representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate, as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for its wilful misconduct or gross negligence, or against the Owner on account of any warranty, representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through, or under it, making claims hereunder may look to the Trust Estate for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

TEXASGULF INC.,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_

THE CONNECTICUT BANK AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee  
as aforesaid,

by

  
Authorized Officer

[Corporate Seal]

Attest:

  
Authorized Officer

STATE OF                    ,)  
                               ) ss.:  
 COUNTY OF                 ,)

On this            day of                    1979, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is a Vice President of TEXASGULF INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT,)  
                               ) ss.:  
 COUNTY OF HARTFORD, )

On this *20th* day of *June* 1979, before me personally appeared **DONALD E. SMITH**, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
 Notary Public

[Notarial Seal]

My Commission expires

**BARBARA S. KACICH**  
 NOTARY PUBLIC  
 MY COMMISSION EXPIRES MARCH 31, 1982

SCHEDULE 1 to LEASE

<u>Builder</u>	<u>Type</u>	<u>AAR</u> <u>Mechanical</u> <u>Designation</u>	<u>Builder's</u> <u>Specifications</u>	<u>Builder's</u> <u>Plant</u>	<u>Quantity</u>	<u>Unit Base</u> <u>Price*</u>	<u>Total</u> <u>Base Price</u>	<u>Road Numbers</u> <u>(Inclusive)</u>	<u>Assumed</u> <u>Time and</u> <u>Place of</u> <u>Delivery</u>
Thrall Car Manufacturing Company	100-ton Covered Hopper with continuous trough hatches	LO	No. HC-100-47- 171 constructed under Builder's Job Order No. 736-B	Chicago, Heights, Illinois	200	\$ 35,025	\$7,005,000	TGSX 443001- TGSX 443200	June 1979 at Indianola, Iowa

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\* Includes inspection and engineering costs but is subject to increase or decrease in accordance with the Purchase Orders. Such Unit Base Price shall also be increased by an amount equal to the Builder's cost of transporting and insuring the units of Equipment from Builder's plant to Indianola, Iowa.

SCHEDULE 2 TO LEASE  
CASUALTY VALUES

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
9/15/79	106.7337
10/15/79	107.0183
11/15/79	107.3052
12/15/79	107.5945
1/15/80	107.8172
2/15/80	108.0418
3/15/80	108.2683
4/15/80	108.4745
5/15/80	108.6826
6/15/80	108.8925
7/15/80	109.0819
8/15/80	109.2731
9/15/80	109.4660
10/15/80	109.6384
11/15/80	109.8125
12/15/80	109.9881
1/15/81	110.1431
2/15/81	110.2996
3/15/81	110.4576
4/15/81	110.5979
5/15/81	110.7395
6/15/81	110.8826
7/15/81	111.0078
8/15/81	111.1343
9/15/81	111.2622
10/15/81	111.3720
11/15/81	111.4832
12/15/81	111.5955
1/15/82	111.6898
2/15/82	111.7852
3/15/82	111.8818
4/15/82	111.9620
5/15/82	112.0433
6/15/82	112.1257
7/15/82	112.1916
8/15/82	105.6881
9/15/82	105.7560
10/15/82	105.8074
11/15/82	105.8597
12/15/82	105.9129

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
1/15/83	105.9495
2/15/83	105.9869
3/15/83	106.0250
4/15/83	106.0485
5/15/83	106.0726
6/15/83	106.0974
7/15/83	106.1073
8/15/83	106.1179
9/15/83	106.1291
10/15/83	106.1253
11/15/83	106.1221
12/15/83	106.1194
1/15/84	106.1017
2/15/84	106.0845
3/15/84	106.0677
4/15/84	106.0377
5/15/84	106.0081
6/15/84	105.9789
7/15/84	105.9363
8/15/84	99.3235
9/15/84	99.1764
10/15/84	99.0152
11/15/84	98.8535
12/15/84	98.6913
1/15/85	98.5149
2/15/85	98.3380
3/15/85	98.1611
4/15/85	97.9722
5/15/85	97.7832
6/15/85	97.5941
7/15/85	97.3930
8/15/85	97.1918
9/15/85	96.9905
10/15/85	96.7770
11/15/85	96.5634
12/15/85	96.3496
1/15/86	96.1237
2/15/86	95.8976
3/15/86	95.6712
4/15/86	95.4344
5/15/86	95.1974
6/15/86	94.9601
7/15/86	94.7124
8/15/86	87.8939
9/15/86	87.6455

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
10/15/86	87.3868
11/15/86	87.1277
12/15/86	86.8682
1/15/87	86.5982
2/15/87	86.3278
3/15/87	86.0571
4/15/87	85.7776
5/15/87	85.4977
6/15/87	85.2174
7/15/87	84.9284
8/15/87	84.6389
9/15/87	84.3489
10/15/87	84.0503
11/15/87	83.7511
12/15/87	83.4514
1/15/88	83.1430
2/15/88	82.8340
3/15/88	82.5245
4/15/88	82.2081
5/15/88	81.8911
6/15/88	81.5736
7/15/88	81.2491
8/15/88	80.9241
9/15/88	80.5985
10/15/88	80.2659
11/15/88	79.9328
12/15/88	79.5991
1/15/89	79.2584
2/15/89	78.9171
3/15/89	78.5748
4/15/89	78.2269
5/15/89	77.8780
6/15/89	77.5281
7/15/89	77.1726
8/15/89	76.8160
9/15/89	76.4584
10/15/89	76.0952
11/15/89	75.7309
12/15/89	75.3655
1/15/90	74.9945
2/15/90	74.6225
3/15/90	74.2493
4/15/90	73.8722
5/15/90	73.4939
6/15/90	73.1145

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
7/15/90	72.7313
8/15/90	72.3468
9/15/90	71.9612
10/15/90	71.5718
11/15/90	71.1811
12/15/90	70.7893
1/15/91	70.3936
2/15/91	69.9967
3/15/91	69.5984
4/15/91	69.1950
5/15/91	68.7902
6/15/91	68.3840
7/15/91	67.9763
8/15/91	67.5672
9/15/91	67.1567
10/15/91	66.7447
11/15/91	66.3313
12/15/91	65.9165
1/15/92	65.5003
2/15/92	65.0827
3/15/92	64.6633
4/15/92	64.2422
5/15/92	63.8194
6/15/92	63.3948
7/15/92	62.9685
8/15/92	62.5404
9/15/92	62.1106
10/15/92	61.6791
11/15/92	61.2458
12/15/92	60.8108
1/15/93	60.3740
2/15/93	59.9355
3/15/93	59.4952
4/15/93	59.0531
5/15/93	58.6093
6/15/93	58.1637
7/15/93	57.7164
8/15/93	57.2673
9/15/93	56.8164
10/15/93	56.3637
11/15/93	55.9093
12/15/93	55.4531
1/15/94	54.9952
2/15/94	54.5354
3/15/94	54.0738

Payment DatePercentage of  
Purchase Price

4/15/94	53.6102
5/15/94	53.1446
6/15/94	52.6771
7/15/94	52.2077
8/15/94	51.7363
9/15/94	51.2630
10/15/94	50.7877
11/15/94	50.3105
12/15/94	49.8312
1/15/95	49.3502
2/15/95	48.8670
3/15/95	48.3820
4/15/95	47.8949
5/15/95	47.4059
6/15/95	46.9149
7/15/95	46.4219
8/15/95	45.9269
9/15/95	45.4299
10/15/95	44.9309
11/15/95	44.4301
12/15/95	43.9272
1/15/96	43.4223
2/15/96	42.9154
3/15/96	42.4064
4/15/96	41.8955
5/15/96	41.3825
6/15/96	40.8674
7/15/96	40.3504
8/15/96	39.8313
9/15/96	39.3101
10/15/96	38.7869
11/15/96	38.2617
12/15/96	37.7344
1/15/97	37.2051
2/15/97	36.6738
3/15/97	36.1403
4/15/97	35.6049
5/15/97	35.0674
6/15/97	34.5278
7/15/97	33.9861
8/15/97	33.4425
9/15/97	32.8967
10/15/97	32.3489
11/15/97	31.7991
12/15/97	31.2472

Payment DatePercentage of  
Purchase Price

1/15/98	30.6932
2/15/98	30.1372
3/15/98	29.5803
4/15/98	29.0226
5/15/98	28.4640
6/15/98	27.9047
7/15/98	27.3445
8/15/98	26.7836
9/15/98	26.2220
10/15/98	25.6596
11/15/98	25.0965
12/15/98	24.5327
1/15/99	23.9683
2/15/99	23.4032
3/15/99	22.8375
4/15/99	22.2712
5/15/99	21.7043
6/15/99	21.1368
7/15/99	20.5689
8/15/99	20.0000

SCHEDULE 3 TO LEASE  
TERMINATION VALUES

<u>Payment Date</u>	<u>Percentage of Purchase Price</u>
8/15/89	78.0251
8/15/94	51.7363
2/15/95	48.8670
8/15/95	45.9269
2/15/96	42.9154
8/15/96	39.8313
2/15/97	36.6738
8/15/97	33.4425
2/15/98	30.1372
8/15/98	26.7836
2/15/99	23.4032
8/15/99	20.0000

## EXHIBIT A

## CERTIFICATE OF ACCEPTANCE

Dated: , 1979, at Indianola, Iowa.

TO THRALL CAR MANUFACTURING COMPANY:

I, a duly appointed and authorized representative of Texasgulf Inc. (the "Lessee"), the duly authorized representative and agent of The Connecticut Bank and Trust Company, as Trustee (the "Owner-Trustee"), do hereby certify that the units of railroad equipment specified in Annex A hereto have been inspected and approved at your plant, and delivery thereof has been received and accepted at Indianola, Iowa, on behalf of the Lessee under a Lease of Railroad Equipment dated as of March 15, 1979, between the Lessee and the Owner-Trustee and on behalf of the Owner-Trustee under a Conditional Sale Agreement dated as of March 15, 1979, between the Owner-Trustee, as Trustee for Thirteenth HFC Leasing Corporation and Thrall Car Manufacturing Company.

I do further certify that the foregoing cars are in good order and condition and conform to the specifications applicable thereto and to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards if any recommended by the Association of American Railroads reasonably interpreted as being applicable to each such unit of equipment.

In addition, I further certify that there was plainly, distinctly, permanently and conspicuously placed, in letters not less than one inch in height, the following legend:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION".

The execution of this Certificate will in no way relieve Thrall Car Manufacturing Company of its duty or decrease its responsibility to produce and deliver the railroad equipment indicated above in accordance with the terms of a Conditional Sale Agreement dated as of March 15, 1979, covering such equipment, subject to any warranties therein contained.

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Duly Appointed and Authorized  
Representative of TEXASGULF INC.,  
the Agent for THE CONNECTICUT  
BANK AND TRUST COMPANY, as  
Trustee

## ANNEX A TO CERTIFICATE OF ACCEPTANCE

Type of Cars: 100-ton covered hopper with continuous trough  
hatches

Place Accepted: Indianola, Iowa.

No. of  
Units

Date Accepted

Road Nos.